

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK VICINAGE

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BECKMAN COULTER, INC., *et al.*,

Defendants.

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Civil Action No.  
98-CV-4812 (WHW)

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, *et al.*,

Plaintiffs,

v.

AMERICAN THERMOPLASTICS CORP., ET AL.,

Defendants.

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Civil Action No.  
98-CV-4781 (WHW)

**PARTIAL CONSENT DECREE BETWEEN PLAINTIFFS UNITED STATES OF AMERICA, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND AND DEFENDANTS GARBCO ASSOCIATES, INC. f/k/a J. FILIBERTO SANITATION, INC., CHESTER HILLS, INC., JOSEPH B. FILIBERTO AND JOHN C. FILIBERTO**

**PARTIAL CONSENT DECREE BETWEEN UNITED STATES OF AMERICA,  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND  
ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND  
AND GARBCO ASSOCIATES, INC. f/k/a J. FILIBERTO SANITATION, INC., CHESTER  
HILLS, INC., JOSEPH B. FILIBERTO AND JOHN C. FILIBERTO**

**TABLE OF CONTENTS**

I.	BACKGROUND .....	3
II.	JURISDICTION .....	4
III.	PARTIES BOUND .....	4
IV.	DEFINITIONS .....	4
V.	STATEMENT OF PURPOSE .....	6
VI.	ESCROW AND PAYMENT OF RESPONSE COSTS .....	6
VII.	FAILURE TO COMPLY WITH CONSENT DECREE .....	9
VIII.	COVENANT NOT TO SUE BY PLAINTIFFS .....	11
IX.	RESERVATION OF RIGHTS BY PLAINTIFFS .....	11
X.	COVENANT NOT TO SUE BY SETTLING DEFENDANTS .....	12
XI.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION .....	13
XII.	DOCUMENT RETENTION AND CERTIFICATION .....	14
XIII.	NOTICES AND SUBMISSIONS .....	15
XIV.	RETENTION OF JURISDICTION .....	16
XV.	INTEGRATION/APPENDICES .....	17
XVI.	LODGING, OPPORTUNITY FOR PUBLIC COMMENT & BAR ORDER ...	17
XVII.	SIGNATORIES/SERVICE .....	16
XVIII.	AGREEMENT TO DISMISS INDEMNIFICATION CLAIM .....	18
XIX.	FINAL JUDGMENT .....	18

## I. BACKGROUND

1. The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), and the State Plaintiffs, the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund (collectively, the Plaintiffs), filed complaints in this consolidated matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9606 and 9607, as well as pursuant to various State statutes, including the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23 *et seq.* (Spill Act), the New Jersey Sanitary Landfill Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 *et seq.* (Sanitary Landfill Closure Act) and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.* (WPCA), seeking injunctive relief regarding the cleanup of the Combe Fill South Landfill Superfund Site in Chester, New Jersey (the Site), recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site (Response Costs) and compensation for damages to natural resources as a result of contamination at the Site.

2. Waste Management, Garbco Associates, Inc. (or Garbco) f/k/a J. Filiberto Sanitation, Inc., Chester Hills, Inc., Joseph B. Filiberto and John C. Filiberto in entering into this Consent Decree (Decree) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

3. The United States and State Plaintiffs have reviewed the Financial Information submitted by the Settling Defendants to determine whether, and to what extent, the Settling Defendants are financially able to pay response costs and damages incurred and to be incurred at the Site. Based upon this Financial Information, the Plaintiffs have determined that the Settling Defendants are able to pay the amounts specified in Section VI, based upon each of the Settling Defendant's specific ability-to-pay, including available insurance coverage. In return for releasing certain indemnification claims, Waste Management will receive a limited credit and contribution protection if it is found to be a successor to any Settling Defendant(s).

4. The Settling Defendants represent that the total amount received in settlement with their insurance carriers, not including any contingency payment to their counsel nor legal expenses incurred by the Settling Defendants, is \$13,645,795.81 as of March 1, 2005. Settling Defendants further represent, by signing this Consent Decree, that they have received signed agreements from their insurers, pursuant to which they will receive all necessary monies to pay the amounts specified in Section VI to the United States and State Plaintiffs. The Settling Defendants will maintain the monies received from their insurance carriers in escrow accounts, as required by the terms of this Decree. These escrow accounts will be used to pay the amounts specified in Section VI of this Decree.

5. The Plaintiffs and Settling Defendants agree, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair,

reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## II. JURISDICTION

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over the Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Decree or this Court's jurisdiction to enter and enforce this Decree.

## III. PARTIES BOUND

7. This Decree is binding upon and enforceable between the Plaintiffs, Waste Management, and Settling Defendants, including their heirs, successors and/or assigns, except as set forth in Paragraph 8.m. of Section IV (Definitions). Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Decree.

## IV. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" or "Superfund" shall mean the Hazardous

Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Financial Information" shall mean those financial documents identified in Appendix A.

h. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States, State Plaintiffs, Settling Defendants, and Waste Management of New Jersey, Inc.

j. "Plaintiffs" shall mean the United States and the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, as trustee for State natural resources, and the Administrator of the New Jersey Spill Compensation Fund.

k. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

l. "Section" shall mean a portion of this Decree identified by a Roman numeral.

m. "Settling Defendants" shall mean only John C. Filiberto, Joseph B. Filiberto, Chester Hills, Inc., and Garbco Associates, Inc. (Garbco), f/k/a J. Filiberto Sanitation, Inc., and officers and directors of the corporate Settling Defendants, acting in that capacity. Settling Defendants, as used herein, does not include any party in these consolidated cases who is deemed to be a successor in liability to the claims in this action.

n. "Site" shall mean the Combe Fill South Landfill Site, located at Parker Road, Chester, New Jersey and depicted more clearly on the map attached as Appendix B. For the purpose of this Decree, Site shall also mean, in addition to the property within the boundaries of the Combe Fill South Landfill, all areas to which hazardous substances discharged at the Site have migrated.

o. "State Plaintiffs" shall mean the New Jersey Department of Environmental Protection (including the Department in its capacity as trustee for State natural resources), the New Jersey Spill Compensation Fund and its Administrator.

p. "Superfund Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

q. "Waste Management" shall mean Waste Management of New Jersey, Inc.

## **V. STATEMENT OF PURPOSE**

9. By entering into this Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment to address and to the extent permitted by law, as limited by the terms of this Decree, resolve all their alleged respective potential liability for the Site as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the Reservations of Rights by Plaintiffs in Section IX.

## **VI. ESCROW AND PAYMENT OF RESPONSE COSTS**

10. By March 15, 2005, the Settling Defendants shall establish an interest-bearing escrow account ("Settlement Escrow Account") to maintain the \$12.5 million received after December 1, 2004 in settlement from their insurance coverage. Settling Defendants have provided the United States and State Plaintiffs a copy of the Settlement Escrow Account agreement. The Settlement Escrow Account agreement provides that the escrow trustee pay, in accord with the requirements of this Decree, upon entry, the United States and State Plaintiffs the funds held in escrow and all interest which has accrued on such funds between the date of lodging and the date of payment to the United States and State Plaintiffs, as required pursuant to this Section. In lieu of establishing the Settlement Escrow Account, Settling Defendants may make payments required by this Paragraph to a Court Registry ("CRIS") Account established by the United States, in accordance with all other requirements of this Section. The allocation of payments from the Settlement Escrow Account, as set forth in paragraphs 11 and 14, relates to the proportion of insurance coverage available to each respective Settling Defendant, pursuant to the insurance policies disclosed by the Settling Defendants.

11. **Payment of United States Response Costs.** Within 30 days of entry of this Decree, Settling Defendants shall make the following payments in reimbursement of federal response costs:

- a. Joseph B. Filiberto shall pay to the EPA Hazardous Substance Superfund (Superfund) \$225,000.
- b. John C. Filiberto shall pay to the Superfund \$225,000.
- c. Chester Hills, Inc. shall pay to the Superfund \$1,174,500.
- d. Garbco shall pay to the Superfund \$9,625,500.
- e. Ninety percent of the interest accumulated in the escrow account specified in Paragraph 10. This payment shall be credited in equal parts to each of the four Settling Defendants.

12. Payment(s) shall be made by FedWire Electronic Funds Transfer (EFT) to the United States Department of Justice account in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_\_, EPA - Region II and Site Spill ID Number 02-56, and DOJ Case

Number 90-11-2-1134/1. Payment(s) shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office in the District of New Jersey. These instructions will be provided following lodging of the Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

13. The total amount paid to EPA pursuant to this Section shall be deposited in the Combe Fill South Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

14. **Payment of State Plaintiffs' Response Costs.** Within 30 days of entry of this Decree, Settling Defendants shall make the following payments in reimbursement of the State Plaintiffs' Response Costs, in the form of a certified or cashier's check:

- a. Joseph B. Filiberto shall pay State Plaintiffs \$25,000.
- b. John C. Filiberto shall pay State Plaintiffs \$25,000.
- c. Chester Hills, Inc. shall pay State Plaintiffs \$130,500.
- d. Garbco shall pay State Plaintiffs \$1,069,500.
- e. Ten percent of the interest accumulated in the escrow account specified in Paragraph 10. This payment shall be credited in equal parts to each of the four Settling Defendants.

Each check shall be made payable to "Treasurer, State of New Jersey", and forwarded by United States certified mail to:

Section Chief, Cost Recovery & Natural Resources Damages Section  
Division of Law, New Jersey Department of Law & Public Safety  
25 Market Street  
Post Office Box 093  
Trenton, New Jersey 08625

**15. Litigation Escrow Account.**

a. Upon signing this Decree, Settling Defendants shall also maintain a separate interest-bearing escrow account ("Litigation Escrow Account") for the sole purposes of paying reasonable legal expenses related to this settlement, reasonable payments to Garbco for costs in connection with the Site and this litigation, and paying taxes due on any interest accumulated in both the Settlement Escrow and the Litigation Escrow Accounts. No monies, including accrued interest, from this account shall be paid directly or indirectly to the Settling Defendants for any purpose.

Settling Defendants have provided the Litigation Escrow Account agreement to the United States and State Plaintiffs. The Litigation Escrow Account shall consist of all remaining settlement payments received by the Settling Defendants from settlements between the Settling Defendants and their insurance carriers, in relation to the Site, prior to December 1, 2004.

b. The Settling Defendants represent that as of March 1, 2005, the amount of all remaining settlement payments received by the Settling Defendants from settlements between the Settling Defendants and their insurance carriers, in relation to the Site, prior to December 1, 2004, is \$1,145,795.81.

c. Beginning on March 1, 2005, and every ninety days thereafter until payment is made pursuant to Paragraph 15(d), Settling Defendants shall provide an accounting to representatives of the United States and the State Plaintiffs, as listed in Section XIII, of all interest accrued and expenses paid by the Litigation Escrow Account.

d. Ninety days after entry of this Decree if no appeal of its entry is taken, or upon final resolution of any appeal of the entry of this Decree, Settling Defendants shall provide a final accounting for the Litigation Escrow Account and pay all funds remaining in the Litigation Escrow Account to the United States and State Plaintiffs:

i. Ninety percent of the monies remaining in the Litigation Escrow Account, including accrued interest, shall be paid to the United States pursuant with the payment provisions in Paragraph 12.

ii. Ten percent of the monies remaining in the Litigation Escrow Account, including accrued interest, shall be paid to the State Plaintiffs. Payment shall be by check made payable to "Treasurer, State of New Jersey", and forwarded by United States certified mail to:

Section Chief, Cost Recovery & Natural Resources Damages Section  
Division of Law, New Jersey Department of Law & Public Safety  
25 Market Street  
Post Office Box 093  
Trenton, New Jersey 08625

iii. At the time of payment from the Litigation Escrow Account, notice of payment shall be sent by Settling Defendants to the representatives of the United States and State Plaintiffs listed in Section XIII of this Decree.

e. The payments made from the Litigation Escrow Account to the United States and State Plaintiffs pursuant to this Section shall be credited as follows: seventy percent of each payment to Chester Hills, Inc.; twenty-five percent of each payment to Garbco Associates, Inc.; two and a half percent of each payment to John C. Filiberto; and two and a half percent of each payment to Joseph B. Filiberto. The allocation of payments set forth in this paragraph relates to the proportion of insurance coverage available to each respective Settling Defendant, pursuant to the insurance



policies disclosed by the Settling Defendants.

16. Any person that is determined by the United States and State Plaintiffs, or held by a court of competent jurisdiction to be a successor to any Settling Defendant(s) shall receive a credit against their CERCLA liability as a successor to the Settling Defendant(s) from the United States and State Plaintiffs equal to the amount of the payment(s) made by that (those) Settling Defendant(s) pursuant to this Decree.

17. The obligation of Settling Defendants, pursuant to the preceding Section, to pay amounts owed the United States and the State Plaintiffs under this Decree are joint and several. In the event of the insolvency or other failure of any Settling Defendant to implement the requirements of this Decree, the other Settling Defendants shall make the required payments.

## **VII. FAILURE TO COMPLY WITH DECREE**

18. **Interest on Late Payments.** If Settling Defendants fail to make any payment under the preceding Section by the required due date, Superfund Interest shall accrue on the unpaid balance through the date of payment.

19. **Stipulated Penalty.**

a. If any amounts due under the preceding Section are not paid by the required date, the Settling Defendants shall collectively be in violation of this Decree and shall pay, as a stipulated penalty, in addition to the Superfund Interest required by this Section, \$2,500 per violation per day that such payment is late, to each party that has not been paid.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or the State Plaintiffs. The obligation of Settling Defendants to pay stipulated penalties incurred pursuant to this Section to the United States and the State Plaintiffs are joint and several.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State Plaintiffs have notified Settling Defendant(s) of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

d. Any stipulated penalty required for failure to pay any amount due the United States under the preceding Section by the required date, shall be identified as stipulated penalties and shall be made by certified or cashier's check made payable to the EPA Hazardous Substance Superfund. The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Combe Fill South Landfill Superfund Site, EPA - Region II and Site Spill ID Number 02-56 and DOJ Case Number 90-11-2-1134/1, and shall be sent by certified mail to:

EPA Superfund, EPA - Region II  
Attn: Superfund Accounting  
Post Office Box 360188M  
Pittsburgh, Pennsylvania 15251

On the day of each payment, Settling Defendant(s) shall send notice that payment has been made to the Department of Justice and EPA in accordance with Section XIII (Notices and Submissions) and to:

Chief, Environmental Enforcement Section  
United States Department of Justice  
DJ No. 90-11-2-1134/1  
Post Office Box 7611  
Washington, D.C. 20044-7611

Chief, New Jersey Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency - Region II  
290 Broadway  
New York, New York 10007  
Attn: Combe Fill South Attorney

Chief, Financial Management Branch  
United States Environmental Protection Agency - Region II  
290 Broadway - 29<sup>th</sup> Floor  
New York, New York 10007

e. Any stipulated penalty required for failure to pay any amount due the State Plaintiffs under the preceding Section by the required date shall be identified as stipulated penalties and shall be made by certified or cashier's check made payable to "Treasurer, State of New Jersey." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Combe Fill South Landfill Superfund Site, and shall be sent by certified mail to:

Section Chief, Cost Recovery & Natural Resources Damages Section  
Division of Law, New Jersey Department of Law & Public Safety  
25 Market Street  
Post Office Box 093  
Trenton, New Jersey 08625

20. If the United States and/or the State Plaintiffs prevail in an action to enforce this Decree, Settling Defendants shall reimburse the United States and the State Plaintiffs for all costs of such action, including but not limited to costs of attorney time.

21. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Decree.

22. Notwithstanding any other provision of this Section, the United States and/or the State Plaintiffs may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Decree.

### **VIII. COVENANT NOT TO SUE BY PLAINTIFFS**

23. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the United States and State Plaintiffs covenant not to sue or to take administrative action against Settling Defendants with regard to the Site, including, but not limited to any action pursuant to Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613, for any federal or State claim for Natural Resource Damages, or for any claim for relief by the State Plaintiffs pursuant to the New Jersey Spill Compensation and Control Act, New Jersey Sanitary Landfill Closure and Contingency Fund Act, and/or the New Jersey Water Pollution Control Act. With respect to present and future liability, this Covenant shall take effect upon receipt by EPA and the State Plaintiffs of all amounts required by Section VI (Escrow and Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Decree). This Covenant Not to Sue is conditioned upon the satisfactory performance by Settling Defendants of all their obligations under this Decree. This Covenant Not to Sue is also conditioned upon the veracity and completeness of the Financial Information provided to the United States and the State Plaintiffs by the Settling Defendants. Subject to the limitations on cost recovery provided by Section 114(b) of CERCLA, 42 U.S.C. § 9614(b), if the Financial Information is subsequently determined by a court of competent jurisdiction to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Decree and this Covenant Not to Sue and the Contribution Protection in Section XI (Effect of Settlement/Contribution Protection) shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the right of either the United States or State Plaintiffs to pursue any other claims, including any arising from Settling Defendants' false or materially inaccurate information. Notwithstanding, Settling Defendants shall receive a credit for those monies paid pursuant to Section VI (Escrow and Payment of Response Costs) against their liability to United States and State Plaintiffs arising in this consolidated action. This Covenant Not to Sue extends only to the Settling Defendants and does not extend to any other person, including any successors to Garbco, J. Filiberto Sanitation, Inc., Chester Hills, Inc., John C. Filiberto, and/or Joseph B. Filiberto.

### **IX. RESERVATION OF RIGHTS BY PLAINTIFFS**

24. The United States and State Plaintiffs reserve, and this Decree is without prejudice to, all rights against the Settling Defendants with respect to all matters not expressly included within

the Covenant Not to Sue in the preceding Section. Notwithstanding any other provision of this Decree, the United States and State Plaintiffs reserve all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendant(s) to meet a requirement of this Decree;
- b. criminal liability;
- c. liability by the Settling Defendants, based upon Settling Defendants' ownership or operation of the Site or their transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance, pollutant, contaminant or solid waste at or in connection with the Site, after signature of this Decree; and
- d. liability arising from the past, present, or future disposal, discharge, release or threat of release of a hazardous substance, pollutant, contaminant or solid waste outside the Site.

25. Notwithstanding any other provision of this Decree, the United States and State Plaintiffs reserve, and this Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Decree, if the Financial Information provided by Settling Defendants, or the certification made by the Settling Defendants in Section XII (Retention of Records and Certification) Paragraph 35(c), is determined by a court of competent jurisdiction to be false or, in any material respect, inaccurate.

26. Subject to any credit provided by Paragraph 16, the United States and State Plaintiffs reserve, and this Decree is without prejudice to, all rights against any successor, by merger or otherwise, to J. Filiberto Sanitation, Inc., Chester Hills, Inc., John C. Filiberto, and/or Joseph B. Filiberto.

#### **X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

27. Settling Defendants Covenant Not to Sue and agree not to assert any claim for relief against the United States or the State Plaintiffs, or their contractors or employees, with respect to the Site or this Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from or against the Hazardous Substance Superfund or the New Jersey Spill Fund, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613; N.J.S.A. 58:10-23.11k, *et seq.*; the Sanitary Landfill Contingency Fund, based on N.J.S.A. 13:1E-105, *et seq.*; or any other provision of law;
- b. any claim against the United States or the State Plaintiffs arising out of response actions at or in connection with the Site, including claims under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or common law; or

c. any claim against the United States or State Plaintiffs pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any State claim for relief, relating to the Site.

Except as provided in Paragraph 29 of this Section and Paragraph 34 of Section XI (Effect of Settlement/Contribution Protection), these Covenants Not to Sue shall not apply in the event the United States or the State Plaintiffs bring a claim for relief or issue an order pursuant to the reservations set forth in Section IX (Reservation of Rights by Plaintiffs), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or the State Plaintiffs are seeking pursuant to the applicable reservation. Nothing in this Paragraph shall prevent Settling Defendants from taking action to enforce any provision of this Decree.

28. Nothing in this Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

29. Settling Defendants agree not to assert any CERCLA claims for relief that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or claim for relief that Settling Defendants may have against any person if such person asserts a claim for relief relating to the Site against any Settling Defendant.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

30. Except as provided in this Decree, nothing herein shall be construed to create any rights in, or grant any claims for relief to, any person not a Party to this Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in the preceding Paragraph, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and claim for relief which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

##### **31. Contribution Protection.**

a. Subject to the applicable requirements of Section 107(e) of CERCLA, 42 U.S.C. § 9607(e), the Parties agree, and by entering this Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for matters addressed in this Decree. The Parties further agree that each Settling Defendant is entitled, as of the date of entry of this Decree, to protection from contribution actions or claims to the extent available under New Jersey law. The matters addressed in this Decree are all response actions taken and to be taken by the Plaintiffs and private parties and all response costs incurred and to be incurred by the Plaintiffs and private parties at or in connection with the Site, and all natural resource damages incurred at the Site or as a result of the discharge of contaminants from the Site. The matters addressed in this Decree do not include those response costs or response

actions as to which Plaintiffs have reserved their rights under this Decree (except for claims for failure to comply with this Decree), in the event the United States or the State Plaintiffs assert rights against Settling Defendants coming within the scope of such reservations.

b. If Waste Management is held, by a court of competent jurisdiction, to be a successor to any Settling Defendant(s), Waste Management, in return for its agreement not to pursue, and to dismiss with prejudice any claim(s) for indemnification arising from its purchase of J. Filiberto Sanitation, Inc., pursuant to Paragraph 45, shall be entitled to protection from contribution actions or claims, as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), and to the extent available under New Jersey law, equal to the amount of the payment(s) made by that (those) Settling Defendant(s) pursuant to this Decree.

32. Upon payment, by the Settling Defendants, of all amounts required under Section VI, the United States and the State Plaintiffs shall promptly release any lien(s) filed against the Settling Defendants in relation to the Site.

33. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Decree, they will notify EPA, the Department of Justice and the State Plaintiffs in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Decree, they will notify EPA, the Department of Justice and the State Plaintiffs in writing within 10 days of service of the complaint or claim upon them. In addition, Settling Defendants shall notify EPA, the Department of Justice and the State Plaintiffs within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Decree.

34. In any subsequent administrative or judicial proceeding initiated by the United States or the State Plaintiffs for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, the entire controversy doctrine, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by United States and State Plaintiffs set forth in Section VIII and by Settling Defendants set forth in Section X.

## **XII. RETENTION OF RECORDS AND CERTIFICATION**

### **35. Retention of Records and Certification.**

a. Until 6 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy

to the contrary. This Paragraph does not apply to any documents provided to the Settling Defendants by other parties pursuant to the Court ordered Alternative Dispute Resolution process in this litigation.

b. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA, DOJ and the State Plaintiffs at least 90 days prior to the destruction of any such records, and, upon request by EPA, DOJ, or the State Plaintiffs, Settling Defendants shall deliver any such records to EPA or the State Plaintiffs. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State Plaintiffs shall be withheld on the grounds that they are privileged.

c. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

i. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since the filing of suit against them regarding the Site, and that each has fully complied with any and all requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

ii. submitted to EPA, DOJ and/or the State Plaintiffs Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted and the time Settling Defendants execute this Consent Decree.

### **XIII. NOTICES AND SUBMISSIONS**

36. Whenever, under the terms of this Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Decree with respect to the United States, EPA, the Department of Justice, the State Plaintiffs and Settling Defendants, respectively.

#### **As to the United States:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division

United States Department of Justice (DJ # 90-11-2-1134/1)  
Post Office Box 7611  
Washington, D.C. 20044-7611

Chief, New Jersey Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency - Region II  
290 Broadway - 17<sup>th</sup> Floor  
New York, New York 10007  
Attn: Combe Fill South Attorney

Chief, New Jersey Remediation Branch  
Emergency and Remedial Response Division  
United States Environmental Protection Agency - Region II  
290 Broadway - 19<sup>th</sup> Floor  
New York, New York 10007  
Attn: Combe Fill South Remedial Project Manager

**As to the State Plaintiffs:**

Section Chief, Cost Recovery & Natural Resource Damages Section  
Division of Law, New Jersey Department of Law & Public Safety  
25 Market Street  
Post Office Box 093  
Trenton, New Jersey 08625-0093

**As to Settling Defendants:**

Damon Sedita, Esq.  
Sedita, Campisano & Campisano, LLC  
Edgewater Commons Two  
81 Two Bridges Road, Suite 211  
Fairfield, New Jersey 07004

**As to Waste Management:**

[Insert name and address]

**XIV. RETENTION OF JURISDICTION**

37. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree.



## **XV. INTEGRATION/APPENDICES**

38. This Decree and its appendices constitute the final, complete and exclusive Decree and understanding between the Parties with respect to the settlement embodied in this Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Decree. The following appendices are attached to and incorporated into this Decree:

Appendix A is a map of the Site; and

Appendix B is a list of the financial documents submitted by Settling Defendants.

## **XVI. LODGING, OPPORTUNITY FOR PUBLIC COMMENT & BAR ORDER**

39. This Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold consent if the comments regarding the Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. In the event of withdrawal by the United States from this Decree, the State Plaintiffs reserve the right to withdraw as well. Settling Defendants and Waste Management consent to the entry of this Decree without further notice, and agree not to oppose entry of the Decree.

40. If for any reason this Court should decline to approve this Decree in the form presented, or an Appellate Court of competent jurisdiction shall overturn entry, this Decree is voidable at the sole discretion of the United States, State Plaintiffs and/or the Settling Defendants, and the terms of the Decree may not be used as evidence in any litigation between the Parties and all rights of the Parties prior to lodging of the Decree shall be deemed to be in effect. In the event this Decree is voided pursuant to this paragraph, all monies paid by the Settling Defendants pursuant to Section VI (Escrow and Payment of Response Costs), or held in escrow, shall be returned within a reasonable time.

41. Entry of this Decree is contingent upon an affirmative ruling by the Court on the order submitted by Settling Defendants resolving all their liability with respect to the Site ("Order"), subject only to the reservations contained herein. If entry of the Order is subsequently overturned by an Appellate Court of competent jurisdiction, this Decree shall be voidable at the sole discretion of the United States and/or Settling Defendants. If the Decree is voided pursuant to this paragraph, the terms of the Decree may not be used as evidence in any litigation between the Parties and all rights of the Parties prior to lodging shall be deemed to be in effect. In the event this Decree is voided pursuant to this paragraph, all monies paid by the Settling Defendants pursuant to Section VI (Escrow and Payment of Response Costs), or held in escrow, shall be returned within a reasonable time.

## **XVII. SIGNATORIES/SERVICE**

42. The undersigned representatives of Settling Defendants to this Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, the Assistant Commissioner for the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Fund, each certifies that they are authorized to enter into the terms and conditions of this Decree and to execute and legally bind each Party on whose behalf they have signed this document.

43. Except as provided herein, each Party hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree, unless the United States or, the United States and the State Plaintiffs, notify Settling Defendants in writing that they no longer support entry of the Decree.

44. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Decree. Each Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. This Decree may be signed in counterparts.

## **XVIII. AGREEMENT TO DISMISS INDEMNIFICATION CLAIM**

45. Waste Management agrees not to pursue, and to dismiss with prejudice, any claim(s) for indemnification arising from the Plan of Reorganization and Agreement for the Exchange of Stock of Waste Management, Inc. for the assets of J. Filiberto Sanitation, Inc.

## **XIX. FINAL JUDGMENT**

46. Upon approval and entry of this Decree by the Court, this Decree shall constitute the final judgment between and among the United States, the State Plaintiffs, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

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WILLIAM H. WALLS  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
KELLY A. JOHNSON  
Acting Assistant Attorney General

\_\_\_\_\_  
STEVEN R. BAER  
Senior Counsel  
J. TOM BOER  
DAVID GORDON  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Post Office Box 7611  
Washington, DC 20044-7611

CHRISTOPHER J. CHRISTIE  
United States Attorney

MICHAEL A. CHAGARES  
Assistant United States Attorney  
District of New Jersey  
Federal Building, 7th Floor  
970 Broad Street  
Newark, New Jersey 07102

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No. 98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

~~WILLIAM McCABE~~

~~Acting Director, Emergency and Remedial Response Division~~

WILLIAM TUCKER

Assistant Regional Counsel

United States Environmental Protection Agency - Region II

290 Broadway

New York, New York 10007

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AND  
NEW JERSEY SPILL COMPENSATION  
FUND

Dated: 5/31/05

JOSEPH SEEBODE  
Assistant Commissioner, Site Remediation

Dated: \_\_\_\_\_

JOHN S. WATSON, Jr.  
Assistant Commissioner, Natural and  
Historic Resources

Dated: 5/31/05

LEONARD ROMINO  
Administrator, New Jersey Spill  
Compensation Fund

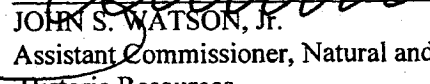
THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AND  
NEW JERSEY SPILL COMPENSATION  
FUND

Dated: \_\_\_\_\_

\_\_\_\_\_  
JOSEPH SEEBODE  
Assistant Commissioner, Site Remediation

Dated: 6/9/05

  
JOHN S. WATSON, JR.  
Assistant Commissioner, Natural and  
Historic Resources

Dated: \_\_\_\_\_

\_\_\_\_\_  
LEONARD ROMINO  
Administrator, New Jersey Spill  
Compensation Fund

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT GARBCO ASSOCIATES, INC. f/k/a  
J. FILIBERTO SANITATION, INC.

Date: April 8, 2005

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Joseph B. Filiberto

President

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT GARBCO ASSOCIATES, INC. f/k/a  
J. FILIBERTO SANITATION, INC.

Date: 11-10-05

← Name: \_\_\_\_\_  
Address: \_\_\_\_\_

See, Ter

JOHN C. FILIBERTO

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_



THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT CHESTER HILLS, INC.

Date: April 8, 2005

Name: \_\_\_\_\_

Address: \_\_\_\_\_

*Formerly President*  
*JOSEPH B. FILIBERTO*

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

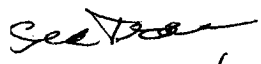
Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT CHESTER HILLS, INC.

Date: 10-10-05

  
Name: JOHN C. FILIBERTO FORMERLY SEC./TREAS  
Address: \_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT JOSEPH B. FILIBERTO

Date: April 8, 2005

JOSEPH B. FILIBERTO

Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_


Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No.98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT JOHN C. FILIBERTO

Date: 4-10-05

JOHN C. FILIBERTO

Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTIES enter into this Decree in the matter of *United States v. Beckman Coulter, Inc., et al.*, Civil Action No. 98-CV-4812 (WHW) and *New Jersey Department of Environmental Protection v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781 (WHW) relating to the Combe Fill South Landfill Superfund Site:

FOR DEFENDANT WASTE MANAGEMENT OF NEW JERSEY, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Stephen T. Joyce  
Address: 4 Liberty Lane West  
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-signed Party:

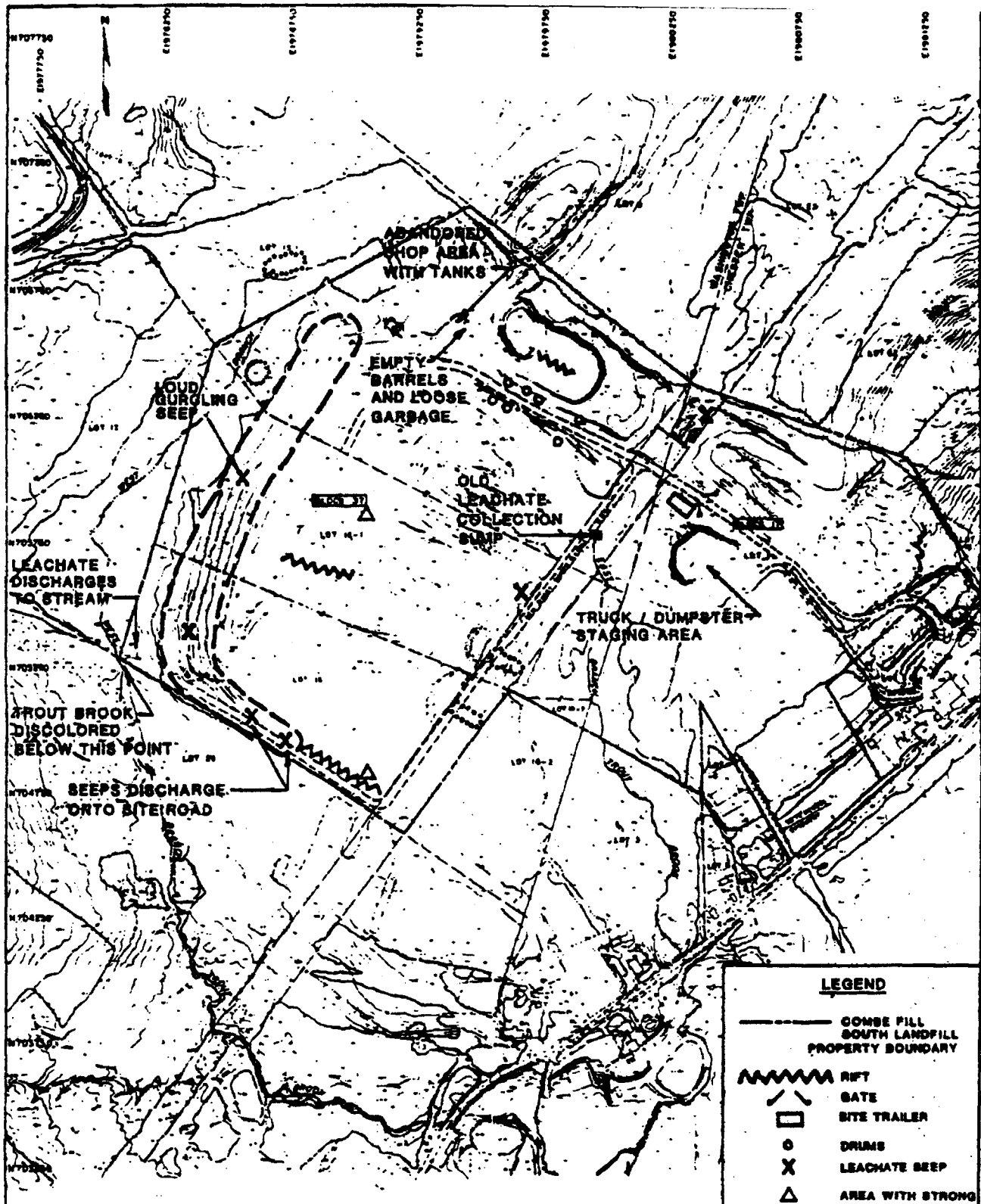
Name: Pamela S. Goodwin, Esq.

Title: Partner

Address: Saul Ewing, LLP  
750 College Road East  
Princeton, NJ 08540

## **APPENDIX A**

### **MAP OF COMBE FILL SOUTH SUPERFUND SITE**



# **LEGEND**

- COMBE FILL SOUTH LANDFILL PROPERTY BOUNDARY
- ~~~~~ RIFT
- ^ GATE
- SITE TRAILER
- DRUMS
- X LEACHATE SEEP
- △ AREA WITH STRONG ORGANIC VAPOR
- SWAMP AREA
- STANDING WATER
- AREA OCCUPIED BY NUMEROUS SEEPS



Lawler, Matysky & Skelly Engineers  
Environmental Science & Engineering Consultants  
One Blue Hill Plaza  
Port River, New York 10965

## **COMBE FILL SOUTH LANDFILL REMEDIAL INVESTIGATION/ FEASIBILITY STUDY**

**r. e. wright associates, inc.**  
earth resources consultants

## **SITE PHYSICAL DESCRIPTION**

**FIGURE 1-2**

## **APPENDIX B**

**FINANCIAL DOCUMENTS SUBMITTED BY SETTLING DEFENDANTS**

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**United States v. Beckman Coulter Inc., et al.**  
**Civil Action 98-4781 .D. N.J.**

**FILIBERTO "ABILITY TO PAY" DOCUMENTS**  
**Subject to Consent Order of Protection (Jan. 23, 2004)**

<b><u>DATE</u></b>	<b><u>DOCUMENT</u></b>
01/09/04	<p>Ltr fr Salisbury/Killian &amp; Salisbury, P.C. to Baer &amp; Boer/USDOJ and Halloran/NJ re <i>Selective V. J. Filiberto Sanitation</i>, attaching materials providing an accounting of money that has gone in and out of the Master Trust Fund re pervious insurance settlements - attachments as follows:</p> <ul style="list-style-type: none"><li>• Spreadsheet - Escrow Funds reflecting income and outflow for the Trust - <i>Selective V. J. Filiberto Sanitation</i>, no: MRS-L-1593-96</li><li>• Spreadsheet - Handwritten ledger for Joseph &amp; John Filiberto - Summary of Unreimbursed Costs 1991/2003</li><li>• Spreadsheet - listing by month all of the Schwartz Tobia invoices from 1991 until the establishment of the Trust - "Paid by Garbco Associates" 12/03</li><li>• Spreadsheet - reflecting by year, the reimbursements for expenses incurred from 1991 through 2003</li></ul>
02/04/04	<p>Ltr fr Sedita to Baer &amp; Boer/USDOJ, &amp; to Halloran/NJ responding to Dec. 9, 2003 ltr requesting various documents &amp; information re Filiberto/Garbco Settlement: Ability to Pay Analysis - attachments as follow:</p> <ul style="list-style-type: none"><li>• Individual Ability to Pay Claim for Joseph &amp; Jane Filiberto, reflecting Background Information, Net Worth, Certification Concerning Asset Transfers - /s/ 01/14/04 by Joseph Filiberto</li><li>• 1998 Joint Tax Returns for Joseph &amp; Jane Filiberto</li><li>• 1999 Joint Tax Returns for Joseph &amp; Jane Filiberto</li><li>• 2000 Joint Tax Returns for Joseph &amp; Jane Filiberto</li><li>• 2001 Joint Tax Returns for Joseph &amp; Jane Filiberto</li><li>• 2002 Joint Tax Returns for Joseph &amp; Jane Filiberto</li></ul>

*United States v. Beckman Coulter Inc., et al.*  
*Civil Action 98-4781 .D. N.J.*

**FILIBERTO "ABILITY TO PAY" DOCUMENTS**

<u><b>DATE</b></u>	<u><b>DOCUMENT</b></u>
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Attachments to Feb. 4, 2004 ltr. (cont'd)

- Individual Ability to Pay Claim for John & Shirley Filiberto, - Background Info., Net Worth, Certification re Asset Transfers
- 1998 Joint Tax Returns for John & Shirley Filiberto
- 1999 Joint Tax Returns for John & Shirley Filiberto
- 2000 Joint Tax Returns for John & Shirley Filiberto
- 2001 Joint Tax Returns for John & Shirley Filiberto
- 2002 Joint Tax Returns for John & Shirley Filiberto
- USDOJ Financial Statement of Corporate Debtor - Garbco Associates, Inc., formerly J. Filiberto Sanitation, Inc.
- Form 1120S Income Tax Returns for an S Corporation for GARBCO ASSOCIATES INC. for years 1998 through 2002
- Jan. 15, 2004, /s/ Certification of John C. Filiberto - he set up irrevocable trusts for wife & children prior to sale of J. Filiberto Sanitation, Inc.
- Jan. 15, 2004, /s/ Certification of Segio A. Pagliery, Esq. - he reviewed Joseph B. Filiberto's 7/20/01 Certification - beneficiaries of Jane Filiberto's 1990 Living Trust referred to in Joseph Filiberto's 7/20/01 Certification are Jane Filiberto & children, Joseph B. Filiberto is neither a Trustee, Protector, Independent Trustee, nor a permissible beneficiary under this trust
- Certificate of Dissolution of Chester Hills, Inc. filed May 30, 1979
- Consent Order of Protection in *U.S. v. Beckman Coulter, Inc.* 98-CV-4881 requiring Filiberto Defendants produce Confidential Financial documents which are governed by FRE 408, /s/ Judge Walls, Jan. 23, 2004

*United States v. Beckman Coulter Inc., et al.*  
*Civil Action 98-4781 .D. N.J.*

**FILIBERTO "ABILITY TO PAY" DOCUMENTS**

<u><b>DATE</b></u>	<u><b>DOCUMENT</b></u>
04/08/04	<p>Ltr fr Sedita to Baer &amp; Boer/USDOJ providing response to Government's additional requests re Filiberto/Garbco Settlement: Ability to Pay Analysis with attachments as follows:</p> <ul style="list-style-type: none"><li>• 2002 U.S. Income Tax Return for an S Corporation, Form 1120S for Beaconfield Farms, Inc., c/o John C. Filiberto</li><li>• 2002 U.S. Return of Partnership Income, Form 1065 for BFFI LTD c/o Shirley S. Filiberto</li><li>• Schedule A - John and Shirley S. Filiberto Real Estate Sale Allocation , Sale Date Dec. 12, 2001 - Total Selling Price \$1,212,588</li></ul>
04/29/04	<p>Ltr fr Sedita to Halloran/NJ responding to Halloran's April 2, 2004 ltr requesting supplemental information re Filiberto/Garbco Settlement: Ability to Pay Analysis with attachments as follows:</p> <ul style="list-style-type: none"><li>• Nov. 10, 1999 Deed - Shirley S. Filiberto, Grantor, transfers ownership of property in Chester Township, Block No. 16, Lot No. 12 to Vincent J. Rasa, Grantee</li><li>• Dec. 12, 2001 Special Warranty Deed - Grantor John C. Filiberto, wife, Shirley Filiberto et al. conveys property in Smith County, Texas to Texas Land &amp; Lakes, Ltd.</li></ul>
03/24/05	<p>Experian Credit Report prepared for Joseph Filiberto, reflecting Federal Tax Lien [faxed by Sedita to Boer/USDOJ]</p>